

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

ARBITRATION PETITION NO.105 OF 2007

M.D.Enterprises

Petitioners

vs.

Kum Kum Kavita Co-op.Housing Socy.Ltd.

Respondents

Mr.Rajiv Narula i/b.M/s.Jhangiani, Narula & Associates
for the petitioners.

Mr.R.S.Ghadge i/b. Mr.A.S.Desai for respondent no.1.

CORAM : ANOOP V. MOHTA,J.

DATED : 21st April, 2007

P.C.

The petitioner has invoked Section 9 of the Arbitration & Conciliation Act, 1996 (for short, Arbitration Act") and prayed to direct the respondents to deposit a sum of Rs.30,00,000/- representing the amounts of bank guarantees realized by the respondents. Admittedly Petition under Section 11 of the Arbitration Act is pending. The apprehensions have been expressed in paragraphs 5 & 6 of the petition which read thus:

"5. The petitioners say that the respondents are co-operative society consisting of the flat purchasers as its members. The funds belongings to the society are used for day to day management of the affairs of the said society. The petitioners say and submit that the respondents do not have sufficient funds for managing the day to day affairs and it is apprehended by the petitioners that the respondents shall utilize the amounts that have been received by them by illegally and unlawfully invoking the Bank Guarantees. The

petitioners say and submit that if the
 respondents are not called upon to deposit the
 amounts invoked under the Bank guarantees as
 also loss/damage suffered by the petitioner
 under the Development Agreement, then there
 will be no funds available for recovery by the
 petitioners and the award that may be passed
 by the Arbitrator in the arbitration
 proceedings shall be a paper decree and the
 petitioners would have no means for recovering
 the decretal amount that may be passed by the
 learned Arbitrator. The petitioners therefore
 say and submit that it is in the interest of
 justice, equity and good conscience that the
 respondents be directed by this Hon'ble Court
 to deposit a sum of Rs.30,00,000/- in this
 Hon'ble Court till the disputes and
 differences between the parties is finally
 adjudicated.

(6) The petitioners say and submit that the
 financial position of the respondents is not
 strong enough and therefore the petitioners
 apprehend that there is every possibility and
 likelihood and in all probabilities that the
 respondents shall utilize the amounts that
 have been received by unlawful and illegal
 invocation of the Bank guarantees in managing
 day to day affairs and for meeting other
 incidental costs and expenditures of the
 respondents."

2. The respondents have replied to these in para 42 as

under:

"42. With reference to para 6, I deny that
 the financial position of respondent is not
 strong enough and therefore, the petitioners
 apprehend that there is every possibilities
 and likelihood and in all probabilities that
 the respondents shall utilize the amounts
 that have been received by unlawful and
 illegal invocation of the Bank Guarantee in
 managing day to day affairs and for meeting
 other incidental cost and expenditure."

3. Considering this reply, as respondents are not
 utilising this money and as their financial position is

strong and able to manage day to day affairs and incidental costs and expenditure, pending the constitution of the Arbitral Tribunal, this statement is sufficient to secure the said amount of the Bank guarantee.

4. The statement to continue till the constitution of the Arbitral Tribunal and four weeks thereafter. The petitioners will be at liberty to move application before the constituted Tribunal under Section 17 of the Arbitration Act, if case is made out.

5. In view of this, the present petition is disposed of accordingly.

[ANOOP V. MOHTA,J.]